

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
ZONING ITEMS PUBLIC HEARING**

**May 24, 2012**

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Will Berkley; Patrick Brewer (arrived at 1:35 p.m.); Marie Copeland; Mike Cravens; Mike Owens, Chair; Lynn Roche-Phillips; and Bill Wilson. Absent were Carla Blanton, Frank Penn, and Carolyn Plumlee.

Planning staff members present: Dr. Derek Paulsen, Commissioner; Chris King, Director; Bill Sallee; Barbara Rackers; Traci Wade; Tom Martin; Chris Taylor; and Stephanie Cunningham. Other staff members present were: Rochelle Boland, Department of Law; Randy Shipp, Division of Historic Preservation; Tim Queary, Urban Forester; Hillard Newman, Division of Engineering; and Captain Charles Bowen, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 7-0 (Blanton, Brewer, Penn, and Plumlee absent) to approve the minutes of the April 26, 2012, Planning Commission meeting.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **LEXINGTON TROTS BREEDERS ASSOCIATION, LLC, ZONING MAP AMENDMENT & RED MILE MIXED-USE DEVELOPMENT (AMD.) ZONING DEVELOPMENT PLAN**

- a. MAR 2012-4: LEXINGTON TROTS BREEDERS ASSOCIATION, LLC (5/24/12)\* - petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Mixed-Use Community (MU-3) zone, for 2.12 net (3.39 gross) acres, for property located at 1200 Red Mile Road (a portion of); and 439, 441, 445, 451, 455, 459, 461, 463 and 471 Nelms Avenue.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Commercial Residential Mixed Use (MU) land use for the parcels on the northeast side of Nelms Avenue, and Greenspace/Open Space (GS) on its southwest side. The properties were included in the study area of the Red Mile Development Plan, which was formulated for the Red Mile property during the spring and summer of 2009, and was accepted by the Planning Commission. This Plan was consciously substituted for a Small Area Plan for the property. The petitioner proposes MU-3 zoning, to be incorporated into the larger MU-3 zoning on the Red Mile property, for a mixed-use entertainment project. The preliminary development plan proposes a townhouse residential development with 34 dwelling units.

The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

The Staff Recommends: **Postponement**, for the following reason:

1. The current request does not meet the Greenspace/Open Space recommendation of the 2007 Comprehensive Plan and the Red Mile Development Plan for more than one-half of the subject property. The applicant's proposal appears to be contrary to the historical land use recommendations involving the subject property.
- b. ZDP 2012-13: RED MILE MIXED-USE DEVELOPMENT (AMD.) (4/28/12)\* - located at 439 - 471 Nelms Avenue and a portion of 1200 Red Mile Road. **(Vision Engineering)**

Note: The purpose of this amendment is to add 34 townhouses along Red Mile Road.

The Subdivision Committee Recommended: **Postponement**. There are inconsistencies with an open space area in the Red Mile Study, and this plan.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property MU-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Greenspace Planner's approval of treatment of greenways and greenspace.
7. Department of Environmental Quality's approval of environmentally sensitive areas.
8. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
9. Addition of pedestrian connections to public sidewalk system.

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\* - Denotes date by which Commission must either approve or disapprove request.

10. Denote number of bedrooms in site statistics.
11. Discuss need for private open space (decks/balconies).
12. Discuss front/rear orientation of units to Red Mile Road.
13. Discuss orientation of Units 26-34 to Nelms Avenue.
14. Discuss the need for sidewalks and widening on Nelms Avenue.

Petitioner Representation: Bruce Simpson, attorney, was present representing the petitioner. He stated that the petitioner would like to request a one-month postponement of this item in order to review the staff's revised recommendation, which was received a few hours prior to this hearing.

Action: A motion was made by Mr. Cravens, seconded by Mr. Wilson, and carried 7-0 (Blanton, Brewer, Penn, and Plumlee absent) to postpone MAR 2012-4 to the June 28, 2012, Planning Commission meeting.

Note: Mr. Brewer arrived at this time.

2. **ZOTA 2012-4: AMEND THE DEFINITION OF "BANQUET FACILITIES"** (10/2/12)\* – petition for a Zoning Ordinance text amendment to amend the definition of "banquet facilities" to delete the requirement that the use must take place within a building currently or formerly used as a residence.

REQUESTED BY: C Brothers, LLC

PROPOSED TEXT: (Note: Underlined text indicates an addition, ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

## ARTICLE 1: GENERAL PROVISIONS AND DEFINITIONS

### 1-11 DEFINITIONS

**BANQUET FACILITY** - A building ~~currently or formerly used as a residence~~, made available to the public for holding meetings and social events. This use may include the sale of alcoholic beverages; indoor live entertainment; and may also include, as an accessory use, events conducted outside the main building in tents or other temporary facilities, subject to the issuance of a permit by the Division of Building Inspection.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed text amendment to modify the definition of "banquet facilities" to remove the residence requirement is logical and appropriate because it allows for similar uses to be treated in a similar manner within the business zones.
2. Banquet facilities have been overly restricted in the past five years to the point that very few have been approved, even though demand exists.

Petitioner Representation: Nick Nicholson, attorney, was present representing the petitioner. He requested a one-month postponement of this item.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 8-0 (Blanton, Penn, and Plumlee absent) to postpone ZOTA 2012-4 to the June 28, 2012, Planning Commission meeting.

3. **ANDERSON CAMPUS RENTAL PROPERTIES, LLC; ROBERT C. HODGES AND ANTHONY McINTIRE ZONING MAP AMENDMENT & P.B. DEVEREUX SUBDIVISION (LYNN GROVE ADDITION) ZONING DEVELOPMENT PLAN**

- a. **MAR 2012-9: ANDERSON CAMPUS RENTAL PROPERTIES, LLC; ROBERT C. HODGES AND ANTHONY McINTIRE (6/30/12)\*** - petition for a zone map amendment from a Single Family Residential (R-1D) zone to a Townhouse Residential (R-1T) zone, for 1.009 net (1.458 gross) acres, for property located at 99 – 119 Burley Avenue.

#### LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 4) recommends Medium Density Residential (MD) future land use for five parcels (105-119 Burley Avenue) and Greenspace/Open Space future land use for three parcels (99-103 Burley Avenue) of the subject property. The applicant proposes redeveloping a portion of the property with townhouses and retaining five of the existing single family structures. The applicant proposes a total of 14 dwelling units and associated off-street parking, for a residential density of 13.88 dwelling units per net acre (9.6 units per gross acre).

The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

The Staff Recommends: **Postponement**, for the following reason:

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1. The current request does not meet the recommendations of the 2007 Comprehensive Plan for Greenspace/Open Space (GS) (buffering of the railroad), or the Medium Density Residential (MD) land use recommendations. The applicant believes that the proposed townhouse area for nine new units (exclusive of the five single family homes that are to remain) may meet the density recommendation; however, the staff cannot analyze this claim without further information from the applicant.
- b. ZDP 2012-31: P.B. DEVEREUX SUBDIVISION (LYNN GROVE ADDITION) (6/30/12)\* - located at 99-119 Burley Avenue.  
(Barrett Partners)

The Subdivision Committee Recommended: Postponement. There were concerns with proposed lotting and compliance with open space requirements of the Zoning Ordinance.

Should this plan be approved, the following conditions should be considered:

1. Provided the Urban County Council rezones the property R-1T; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote reciprocal parking and access for all buildings.
8. Denote sidewalk widths.
9. Denote number of bedrooms proposed per unit.
10. Complete topographic information on entire plan.
11. Discuss use of triangular remnant in R-1D zone.
12. Discuss need for sidewalk along Burley Avenue.
13. Discuss compliance with Article 8-10(o)(3) of the Zoning Ordinance.
14. Discuss lack of parking at 119 Burley Avenue.
15. Discuss plan status.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner had met with the staff and believes that progress is being made. However, the staff is still recommending postponement of this item, so the petitioner would like to request a one-month postponement in order to continue to address the staff's concerns.

Action: A motion was made by Ms. Beatty, seconded by Ms. Roche-Phillips, and carried 8-0 (Blanton, Penn, and Plumlee absent) to postpone MAR 2012-9 to the June 28, 2012, Planning Commission meeting.

4. ZOTA 2012-7: AMEND THE NOTIFICATION REQUIREMENTS FOR CONDITIONAL USE PERMIT APPLICATIONS (6/18/12)\* – petition for a Zoning Ordinance text amendment to modify the notification requirements for Conditional Use Permit applications to the Board of Adjustment by increasing the notification area to a distance of 800 feet from the subject property, and requiring notice to the nearest neighborhood association or homeowner's association, regardless of distance.

INITIATED BY: Urban County Council

PROPOSED TEXT: (Note: Underlined text indicates an addition, ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

**7-5 NOTICE** - The Board shall fix a reasonable time for hearing an action or appeal and shall give public notice in accordance with KRS Chapter 424, as well as written notice as set forth more fully herein. Any person may appear at the hearing personally or by attorney. All applications shall be decided by the Board within sixty (60) days from the date of the application, unless postponement is granted pursuant to the Board's bylaws.

When an application is made for a variance, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to the owner of every parcel of property within two hundred (200) feet of the property to which the application applies. In the event that the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a 200-foot radius of the subject property, but to the next two properties beyond those included in the 200-foot radius; but in no event shall notice be required for property more than twenty-four hundred (2,400) feet from the subject property.

When an application is made for a conditional use permit, administrative review, non-conforming use or structure appeal, or any other appeal, written notice shall be given at least twenty-one (21) days in advance of the public hearing on the application to the applicant, Division of Building Inspection, and to owners of parcels of property within eight hundred (800) ~~four hundred (400)~~ feet of the property to which the application applies. In the event that

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the subject property adjoins land which is zoned Agricultural Urban (A-U), Agricultural Rural (A-R), Agricultural Natural Areas (A-N), or Agricultural Buffer (A-B), notification shall be given by first-class mail to not only those properties within a ~~800-foot~~ ~~400-foot~~ radius of the subject property, but to the next two properties beyond those included in the ~~800-foot~~ ~~400-foot~~ radius; but in no event shall notice be required for property more than one (1) mile from the subject property. In addition, notification shall also be given by first-class mail to the neighborhood or homeowner's association which is nearest to the subject property, regardless of distance. Such association must be duly registered with the government through its Division of GIS.

All written notice shall be by first-class mail, with certification by the Board's Secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the Board the name and address of an owner of each parcel of property as described in this section and of the nearest neighborhood or homeowner's association. Records maintained by the Property Valuation Administrator may be relied upon to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners.

The Zoning Committee Recommended: **Referral to the full Commission.**

The Staff Recommends: **Postponement**, for the following reason:

1. The proposed text amendment needs further review, discussion, and research prior to the staff making a substantive recommendation to the Planning Commission.

Staff Comment: Mr. Sallee stated that the staff recommended postponement of this item to the Zoning Committee at their meeting three weeks ago. The staff is now requesting an additional three-week postponement, to the Commission's June 14<sup>th</sup> meeting. Mr. Sallee noted that the staff would provide an update on their progress on this item at the Commission's June 7<sup>th</sup> Zoning Committee meeting.

Action: A motion was made by Mr. Wilson, seconded by Ms. Beatty, and carried 8-0 (Blanton, Penn, and Plumlee absent) to postpone ZOTA 2012-7 to the June 14, 2012, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, May 3, 2012, at 8:30 a.m. The meeting was attended by Commission members: Eunice Beatty, Will Berkley, Marie Copeland, Mike Owens, Frank Penn and Carolyn Plumlee. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jim Gallimore, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Galt, Chris Taylor, Dave Jarman and Denice Bullock, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Rochelle Boland, Law Department. The Committee made recommendations on plans as noted.

General Notes

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, May 3, 2012, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)

- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

**1. THE FAIRWAYS AT ANDOVER, LLC, ZONING MAP AMENDMENT & THE FAIRWAYS OF ANDOVER ZONING DEVELOPMENT PLAN**

- a. MAR 2012-8: THE FAIRWAYS AT ANDOVER, LLC (6/30/12)\* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 18.23 net and gross acres, for property located at 3435 McFarland Lane.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 9) recommends Low Density Residential (LD) future land use for the subject property. The Plan also recommends a collector street connection between Kavanaugh Lane and Autumn Ridge Drive. The petitioner proposes to develop 110 single family residential lots on the subject property, which would yield a density of 6.03 dwelling units per acre.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. A restricted Planned Neighborhood Residential (R-3) zone can be found to be in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The 2007 Comprehensive Plan recommends Low Density Residential (LD) future land use for the subject property, defined as 0-5 dwelling units per net acre or 0-4 dwelling units per gross acre. With 18.23 acres of property (net and gross), the Comprehensive Plan recommends a maximum of 91 dwelling units at this location.
  - b. R-3 zoning with a conditional zoning restriction to limit the type of housing to single family residential would be most compatible with adjacent neighborhoods.
  - c. If restricted via conditional zoning to 91 dwelling units, an R-3 zone would be completely in agreement with the Comprehensive Plan's land use recommendation for Low Density Residential land use.
  - d. The proposal provides for the collector street system to connect via the intersection of Kavanaugh Lane and Autumn ridge Drive on the subject property, as recommended by the Land Use Element of the 2007 Plan.
2. This recommendation is made subject to approval and certification of ZDP 2012-30: The Fairways of Andover prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be restricted on the subject property via conditional zoning:
  - a. A maximum of ninety-one (91) residential dwelling units shall be permitted on the subject property.
  - b. The subject property shall be limited to detached single family residential use, allowable accessory uses and conditional uses approved by the Board of Adjustment.

These restrictions are appropriate and necessary for the subject property in order to ensure compatible development in agreement with the Comprehensive Plan, and appropriate density protections for the adjacent single family residential neighborhoods.

- b. ZDP 2012-30: THE FAIRWAYS OF ANDOVER (6/30/12)\* - located at 3435 McFarland Lane.  
(EA Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Denote construction entrance location.
9. Addition of tree inventory information (% canopy).

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10. Revise notes #4 & 10.
11. Discuss proposed homeowner's association area and lotting.
12. Discuss the proposed Lawson Lane termination.

Zoning Presentation: Ms. Wade presented the staff report on this rezoning request, briefly orienting the Commission to the location of the subject property on McFarland Lane. She noted that McFarland Lane is a substandard public street, which now serves only the subject property. That roadway is approximately 12 feet wide, and has an access to Todds Road between Man O' War Boulevard and the Interstate 75 overpass. In addition to the lack of improvements on McFarland Lane, visibility at its intersection with Todds Road is poor, so it is proposed to be closed as part of the development of the subject property. The property is served by four other public streets: Lawson Lane; Kavanaugh Lane; Marco Lane; and Autumn Ridge Drive. Each of these streets stubs into the subject property, although it has had a McFarland Lane address for decades. The subject property is the last remaining undeveloped agricultural tract in this vicinity. Ms. Wade stated that all of the zoning and development in the vicinity of the subject property is residential. The Andover Golf Club and Andover Forest subdivision are located to the west; the Brighton East and Scully properties are to the southwest; and the Autumn Ridge subdivision is located to the northwest. All of these properties are currently developed for single-family residential use, but they feature a mix of residential zoning, including R-1D, R-1E, and R-3.

Ms. Wade said that the petitioner is now proposing 91 single-family residential lots for the subject property, as well as the connection of Autumn Ridge Drive and Kavanaugh Lane, which would complete the connector street system in this portion of the Urban Service Area. Ms. Wade displayed several photographs of the subject property, noting the location of the large stormwater detention basin located to the north.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Low Density Residential development for the subject property, defined as 0 – 5 dwelling units per net acre or 0 – 4 per gross acre. The Comprehensive Plan also recommends the completion of the connector street system via the connection of Kavanaugh Lane and Autumn Ridge Drive. The petitioner originally proposed to construct 110 dwelling units on the subject property, which was not in agreement with the residential density recommended by the 2007 Comprehensive Plan. However, since the Subdivision and Zoning Committees met three weeks ago, the petitioner has revised their development plan, and the 91 dwelling units currently proposed falls within the Plan's land use and density recommendations. The staff and Zoning Committee have recommended approval of this rezoning request, with the conditional zoning restrictions as listed in the staff report and on the agenda. The staff believes that limiting the density on the subject property via conditional zoning restrictions will help to further the recommendations of the Comprehensive Plan, and will ensure that the proposed development will be in keeping with the existing residential neighborhoods in the area.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting for the Commission the location of the four streets that stub into the subject property. He stated that the development plan depicts 91 single-family lots, with two HOA areas, one of which is proposed for stormwater management. The Subdivision Committee recommended approval of this plan, subject to the conditions as listed on the agenda. Since the submission of this revised development plan, which reduces the number of lots proposed from 110 to 91, the staff has prepared a revised recommendation, copies of which were distributed to the Commission members. Mr. Taylor stated that the staff is now recommending approval of this plan, as follows:

The Staff Recommends: Approval, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote construction entrance location.
8. Addition of tree inventory information (% canopy).
9. Revise notes #4 & 10.
10. Denote: The location and width of the golf course access easement will be resolved at the time of the Preliminary Subdivision Plan.
11. Denote: The proposed Lawson Lane termination and any necessary waivers of the Land Subdivision Regulations will be resolved at the time of the Preliminary Subdivision Plan.

Mr. Taylor said that the first six conditions recommended refer to typical sign-offs. Condition #7 requires that the petitioner denote the construction entrance location on the plan. The petitioner is proposing two construction entrances, off of Kavanaugh Lane and Autumn Ridge Drive. Condition #8 requires that the petitioner provide tree canopy information, while #9 refers to two development plan notes that require revision.

Mr. Taylor stated that the petitioner's revised plan depicts a 10' pedestrian/golf cart access from the end of Autumn Ridge Drive to serve the Andover golf course. He noted that the staff has some concerns about the width and location of that proposed access, which is the basis for the addition of condition #10. The staff is comfortable with the provision of a golf cart access, but they want to ensure that the access is in the most appropriate location. The Planning Commission will also have the opportunity to review that access when the petitioner files a Preliminary Subdivision Plan for the subject property.

With regard to condition #11, Mr. Taylor explained that, from the time this plan was initially filed, the staff has had concerns about the proposed termination of Lawson Lane with a cul-de-sac. The staff expressed some desire to have Lawson Lane terminate at an intersection with either Kavanaugh Lane or Autumn Ridge Drive. The lots that are currently proposed in that location with the cul-de-sac would be double frontage lots, and would, therefore, require a waiver of the Land Subdivision Regulations at the time of the Preliminary Subdivision Plan. Should the petitioner elect to terminate Lawson Lane into Kavanaugh Lane with a T-intersection, the lots near the corner would no longer have double frontage, and the need for a waiver could be reduced or eliminated. The staff is recommending the addition of condition #11 to require that these issues be resolved on the Preliminary Subdivision Plan.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He distributed an exhibit booklet to each of the Commission members, noting that he would refer to it throughout his presentation.

Mr. Simpson stated that there are not many properties in Fayette County that remain in an A-U zone. Although the subject property was zoned A-U in 1969, when a comprehensive rezoning was completed for the entire county, it has been recommended for development in every Comprehensive Plan since that time. The property has been in the possession of its current owners, who still reside there, since 1961. A significant amount of residential development has taken place in the vicinity of the subject property since then; it is now completely surrounded by neighborhoods, with four existing stub streets into it.

Mr. Simpson said that there are some challenges involved in the development of the subject property, since existing residents in the surrounding neighborhoods might have become accustomed to the stub streets and lack of through traffic. The petitioner has significant experience in the Lexington area, including several neighborhoods in the vicinity of the subject property, and they are mindful of the neighbors' concerns. In order to mitigate those concerns, the petitioner went door-to-door in the surrounding subdivisions to inform the residents of their proposal for the subject property. The petitioner has also met with all of the surrounding neighborhood associations, as well as holding a meeting for more than 440 households who received the required notification of this rezoning request. At that meeting, the petitioner informed the residents of their original proposal to construct 110 residential lots. However, after learning of the neighbors' concerns about the proposed density, the petitioner revised the plan to include 91 dwelling units.

Mr. Simpson stated that the petitioner knew that nearby residents would be concerned about property values, as well as density, so they did a great deal of research about the price, size, and appearance of every residence within 1,000 feet of the subject property. They then used that information to determine that homes in the proposed development should be priced between \$200,000 and \$300,000 in order to be compatible with the surrounding neighborhoods. Since most of the surrounding communities are deed-restricted, the petitioner researched all of the restrictions for the Autumn Ridge, Brighton East, and Banbury Hunt neighborhoods, and they intend to implement deed restrictions that match or exceed those in order to satisfy residents' concerns that the homes in the proposed development will be similar to their own in price and quality. Mr. Simpson stated that the petitioner has forged an agreement with the Brighton East Homeowners Association, a representative of which intends to speak in favor of this request during the public comment portion of this hearing. He said that, after the petitioner revised the development plan, they held another meeting with the surrounding 400+ residents.

Mr. Simpson stated that, although he believes that the petitioner has made the best possible effort to communicate with the neighbors of the subject property, there are still some who are opposed to this request. He explained that, if this rezoning request is approved by the Planning Commission, there will still be a required review process for the subdivision and development plans, which will include all of the necessary sign-offs prior to any grading or construction. Of particular concern to area residents is the retention basin near the subject property, which serves to retain stormwater for several subdivisions and functions as an amenity for the Autumn Ridge neighborhood. Over the years, the existing basin has become filled with silt, which causes algae growth and makes the pond not as attractive as it once was. Mr. Simpson stated that there are several large stormwater conduits from neighboring developments which feed directly into the pond and the drainage easement that leads to it. The petitioner, however, is proposing an alternative solution for stormwater management on the subject property, which has been reviewed by the staff of the Division of Engineering. Mr. Simpson said that the petitioner is willing to address those issues at this hearing, although it would be more appropriate as part of the Preliminary Subdivision Plan process.

Referring to his exhibit book, Mr. Simpson noted that the photographs therein depict: several types of houses built by the petitioner on St. Andrews Walk; various houses in the vicinity of the subject property; an aerial view of the sur-

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rounding Banbury Hunt, Autumn Ridge, and Brighton East neighborhoods, noting the density of each development and the density of the proposed development, which will be comparable; an aerial view of the stormwater discharge points around the subject property, which are not muffled or diffused prior to reaching the existing retention pond; the stormwater drainage easement from the subject property toward the retention basin, noting that the existing point discharges were never "challenged" since the subject property is the last in the vicinity to be developed; and several stormwater pipes, noting the presence of silt, which was not required to be managed. Mr. Simpson said that the petitioner engaged EA Partners to review the stormwater discharge on the subject property and create a system to minimize the impact discharge on properties above and below the discharge point. He explained that there is a designated FEMA floodplain area on the property, although the area does not hold standing water; it runs only when stormwater flows from upstream. The petitioner has undertaken a series of initiatives, resulting in the issuance of a Conditional Letter of Map Revision (CLOMR) from FEMA. Once the proposed development is completely through the rezoning process, the petitioner intends to file for a Letter of Map Amendment (LOMA) from FEMA as well. The petitioner contends that not only will the proposed development not exacerbate any existing runoff problems, it could improve the stormwater management situation for the entire area.

Commission Questions: Ms. Copeland asked Mr. Simpson where the retention pond is located. Using the rendered zoning map, Mr. Simpson indicated the location of the pond. Al Gross, EA Partners, also noted the location of the pond; the flow path that leads from the subject property to the pond; the other five or six discharge points around it; and the FEMA designated floodplain. He said that the request for a CLOMR has been reviewed by FEMA, the Kentucky Division of Water, and the Corps of Engineers, and they have granted approval to reconstruct the drainway and remove the Flood Hazard Area. Ms. Copeland asked if the water would travel under the homes in the proposed development. Mr. Gross answered that the water would travel under the proposed street system. He noted that many of the areas originally designated as floodplains when FEMA first began mapping flood hazards in the 1970s have since been developed, and have been found not to have flooding problems at all.

With regard to Ms. Copeland's question, Mr. Simpson referred to his exhibit booklet, noting that it includes the petitioner's proposed plan for best management of the stormwater on the subject property. He added that he could also provide copies of the FEMA study, as well as the CLOMR approval letter, if the Commission members so chose.

Ms. Copeland asked how the petitioner will move the stormwater from the street system to the new retention basin. Mr. Gross responded that there will be a system of pipes, curb box inlets, and yard inlets designed to catch stormwater. Each of those lines will be piped independently to a line that will ultimately form the drainage release for the entire area, past Andover Country Club to the reservoir. Ms. Copeland asked if the necessary easements would be included on the Preliminary Subdivision Plan. Mr. Gross answered that some of the easements are shown on the Zoning Development Plan, depicting where the pipe network will exist.

Ms. Beatty asked if the petitioner has been made aware of any existing flooding problems in the vicinity of the subject property. Mr. Simpson stated that some of the residents who live near the pond were present to speak about their concerns about existing flooding. He added that some residents actually use the stormwater easements for plantings or other features, even though there are prohibitions against constructing structures in those areas. The petitioner intends to mitigate to the fullest extent possible the impact of the proposed development on the drainage system in the area.

Mr. Cravens asked when the petitioner should receive the approval from FEMA to remove the floodplain area from the maps. Mr. Gross answered that the CLOMR allows the work to be done during the construction on the site. After the site is constructed, the mechanism will be in place to allow the filing of the LOMR, which will be reviewed by FEMA and its consultants to ensure that the petitioner complied with the CLOMR. Upon approval of the LOMR, the floodplain will be removed from the FEMA maps.

Citizen Support: Steve Milner, attorney, was present representing the Brighton East Homeowners Association and several homeowners on Lawson Lane. He said that the petitioner has proposed a written agreement between the Brighton East HOA and the petitioner, which has not yet been signed since the HOA board has not had an opportunity to meet and discuss it. However, the HOA is in general agreement with the document, the proposed rezoning, and the development plan. Mr. Milner stated that the Brighton East residents are concerned about the impact of the proposed development on their property values, and they support the proposed 50' minimum lot width and the minimum lot square footage as a means to protect their investments in their homes. The Brighton East residents have been concerned about the closure of McFarland Lane, as it is substandard and has insufficient sight distance at Todds Road. Mr. Milner added that several members of the Brighton East HOA are present at this hearing, should the Commission wish to hear their statements.

Warren Snyder, 3500 Indian Summer Trail, stated that he recognizes that the subject property will inevitably develop, and he appreciates the petitioner's commitment to making the proposed development comparable to the existing homes in the area. He is concerned, however, about stormwater runoff, since his property is located at the confluence of four sources of water. There is a concrete plume and riprap channel at the rear of his property, with a two-foot opening that routes all of the water from the subject property to the drainage ditch. Mr. Snyder said that he

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is impressed with the number of improvements that were made to the revised development plan over what was originally proposed, including the addition of a dissipation zone for the runoff, but he believes that the Commission should not underestimate the sensitivity of the houses located immediately downstream from the subject property. Under the current system, during a heavy rain event, stormwater can flow well outside of the drainage easement into Mr. Snyder's back yard. He said that the 120' section of riprap located behind his house is the only dissipation area between the subject property and the retention basin. He has maintained the riprap channel for nearly 20 years, in order to prevent the trash and debris that collects there from washing into the basin; but it is difficult when there is no means to slow the water after it leaves his property. Mr. Snyder stated that he sometimes feels like he is on an island, with water coming at his property from all four directions. He asked that the Planning Commission please be sensitive to these concerns when making their recommendation on this proposed rezoning.

Citizen Opposition: Norm Johnson, 1125 Chetford Drive, stated that he does not believe that the proposed development is in agreement with the recommendations of the Comprehensive Plan. He said that he paid a \$40,000 - \$50,000 premium for his golf course lot in Andover Forest, and he believes that the smaller lots in the proposed development will ruin his view. The properties on St. Andrews Walk, which were also developed by the petitioner, have all of the air conditioning units located in the rear of the lot. If the proposed homes are similarly developed, Mr. Johnson's view will consist of the back sides of the houses, decks, and air conditioners. He added, with regard to Mr. Simpson's assertion that the petitioner had researched lot sizes in the area, that he does not believe that they considered the homes in Andover Forest in that calculation. The surrounding neighborhoods are mostly zoned R-1, and Mr. Johnson said that the proposed development should be consistent with that zoning. Mr. Johnson stated that he knew that the subject property would eventually be developed, but he did not expect it to be with 50x100' lots, and he asked that the Planning Commission take his concerns into consideration.

Commission Questions: Ms. Copeland asked Mr. Johnson to point out the location of his home on the aerial map. Mr. Johnson did so, using the large aerial map (petitioner's exhibit). He noted that his property adjoins the subject property across the golf course.

Ms. Roche-Phillips asked how long Mr. Johnson has lived on his property. He answered that he has lived there for eight years.

Petitioner Rebuttal: Mr. Simpson stated that Mr. Johnson lives across the golf course fairway, in the Andover Forest neighborhood.

With regard to Mr. Snyder's comments, Mr. Simpson said that he has a legitimate concern. That is why the petitioner has committed to performing a stormwater study and preparing a best management plan for the subject property. Mr. Simpson stated that it would be more appropriate to address the stormwater issues fully at the time of the Preliminary Subdivision Plan for the property, since it will be more apparent on that plan if the petitioner is fully complying with the requirements of the Engineering Manuals, Zoning Ordinance, and Subdivision Regulations. He noted that the petitioner should also know at that point whether FEMA intends to approve their final proposal for the floodplain area, and whether the Division of Engineering has granted their approval as well.

Mr. Simpson stated that the petitioner contends that their efforts to work with the surrounding neighborhoods have been effective, since only two residents voiced concerns at this hearing. He said, with regard to Mr. Johnson's comments, that not everyone can live in a neighborhood like Andover Forest; however, Brighton East, Banbury Hunt, and Autumn Ridge are also nice neighborhoods, and the petitioner has agreed that the proposed development will be compatible with them. Mr. Simpson concluded by requesting the Commission's approval of their applications.

Staff Rebuttal: Ms. Wade stated, with regard to Mr. Johnson's comments, that the petitioner is proposing R-3 zoning for the subject property. The R-3 zone permits single-family dwelling units, and the petitioner is proposing to restrict development on the property to such via conditional zoning restrictions. Ms. Wade said that many zones can implement the Comprehensive Plan recommendation for Low Density Residential development, but the R-3 zone is often used because it permits a great deal of flexibility with regard to side yard setbacks and lot frontage.

Citizen Rebuttal: No citizen rebuttal comments were presented at this time.

Commission Discussion: Ms. Beatty stated that she would be interested in hearing the detailed information from the petitioner's engineer about how stormwater would be managed on the subject property, but asked if it would be more appropriate to address those issues at the time of the Preliminary Subdivision Plan. Mr. Owens replied that it would be more appropriate to consider that information at the time of the Preliminary Subdivision Plan, which will also be presented to the Subdivision Committee following its filing.

Ms. Roche-Phillips said that she shares Ms. Beatty's concerns. She stated that she is reluctant to approve a residential development in a floodplain area, but she is aware that those issues are not germane to the requested rezoning. Ms. Roche-Phillips added that she believed that the subject property can be developed with R-3 zoning, particularly

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with the petitioner's proposed conditional zoning restrictions. She said that she would make a motion for approval of this request, trusting that the aforementioned concerns will be reviewed and addressed with the filing of the Preliminary Subdivision Plan for the property.

Zoning Action: A motion was made by Ms. Roche-Phillips, seconded by Ms. Beatty, and carried 8-0 (Blanton, Penn, and Plumlee absent) to approve MAR 2012-8, for the reasons provided by staff, including the proposed conditional zoning restrictions.

Development Plan Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Cravens, and carried 8-0 (Blanton, Penn, and Plumlee absent) to approve ZDP 2012-30, subject to the 11 conditions as listed in the revised staff recommendation.

### C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENT REQUESTS

1. **ZOTA 2012-5: ADD RETAIL SALES OF AUTOMOBILE PARTS WITH STORAGE AND DISTRIBUTION OF INVENTORY IN THE B-3 ZONE** (10/2/12)\* – petition for a Zoning Ordinance text amendment to add retail sales of automotive parts with storage and distribution of inventory to other local establishments under same ownership in the Highway Service Business (B-3) zone.

REQUESTED BY: TriStar Ventures, LLC

PROPOSED TEXT: (Note: Text underlined is an addition to the current Zoning Ordinance.)

#### **ARTICLE 8 8-20 HIGHWAY SERVICE BUSINESS (B-3) ZONE**

**8-20(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. Establishments and lots for the display, rental, sale, service, and minor repair of farm equipment, contractor equipment, automobiles, motorcycles, trucks, boats, travel trailers, mobile homes, or supplies for such items.
27. Retail sale of automotive parts with storage and distribution of inventory to other local establishments under the same ownership.

**8-20(c) Accessory Uses** (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. Wholesale, warehouse and storage facilities.

**Staff Alternative Text:**

#### **ARTICLE 8 8-20 HIGHWAY SERVICE BUSINESS (B-3) ZONE**

**8-20(b) Principal Uses** (Other uses substantially similar to those listed herein shall also be deemed permitted.)

27. Retail sale of automotive parts with storage and distribution of inventory to other local establishments under the same ownership, when such use is at least two hundred (200) feet from a residential zone.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval of the Staff Alternative Text**, for the following reasons:

1. The specific use the applicant proposes is technically not permitted in the B-3 zone at the present time. Since the applicant's intended use is appropriate in some B-3 locations, this is a timely update to the Zoning Ordinance.
2. This combination of retail and storage uses at a single location has the potential to reduce total vehicle miles travelled and traffic congestion at other store locations in the community.
3. Spacing requirements for this new use are necessary, as large truck traffic in close proximity to residential uses should be avoided, and since there are several residential neighborhoods adjacent to B-3 zones where this new use would be permitted.

Staff Presentation: Mr. Sallee presented the staff report, explaining that the petitioner is requesting this text amendment to the Zoning Ordinance in order to clarify the retail sale of auto parts, and to allow it with storage and distribution components in the B-3 zone. The petitioner's company operates several auto stores in Kentucky.

Mr. Sallee said that the proposed text, which is listed in the staff report and on the agenda, would add a 27<sup>th</sup> listed principal permitted use in the B-3 zone. Specifically, that text would allow retail sale of automobile parts with storage and distribution of

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inventory permitted to other local establishments under the same ownership. The petitioner has an existing facility in Lexington that they would like to expand in order to have storage and distribution activities as part of the auto parts store. Storage is listed in the B-3 zone as an accessory use, meaning that it must be incidental and subordinate to the principal use of the property. Mr. Sallee explained that most auto parts stores have two areas of storage: an area behind the counter that is restricted for employee access, where employees retrieve auto parts and bring them to the customer at the counter; and a warehouse-type storage area that is not visible or accessible by the public. He displayed an example of the proposed facility on the overhead projector, noting that the petitioner proposes an addition to an existing auto parts store, which would have more square footage devoted to storage than to retail areas where customers can shop on their own for auto supplies such as windshield wiper blades. The petitioner would like to use one of their stores located near Interstate 75 as a "mini-distribution facility." That facility would be served by large tractor-trailer trucks, and would then act as a hub for their other local retail stores. Distribution from the hub would be managed via vans or small trucks, which would be more efficient for their operation. Mr. Sallee stated that the staff sees this proposal as a benefit to the community, in that truck traffic will be limited to one location only, so that type of traffic can be reduced on local arterials and collector streets.

Mr. Sallee said that the petitioner could have opted to rezone the store proposed for the hub facility to the B-4 zone, which does allow auto parts stores as permitted uses. The B-4 zone would allow for much more square footage devoted to storage, in comparison to the area in which customers would be allowed to shop for auto parts. However, the staff found that there are very few locations on New Circle Road or other commercial arteries that are recommended for Wholesale & Warehouse use; most of the properties in those areas are recommended for Highway Commercial or Retail Trade uses.

Mr. Sallee stated that the proposed text amendment will help to clarify the unique nature of an auto parts store, which is dominated more by storage uses than other types of retail stores. The only comparable type of store the staff could find was a shoe store. He said that, although the staff believes that the reduction in truck and delivery traffic will be beneficial to the community, they are concerned about heavy truck traffic in close proximity to residential zones. At the Zoning Committee meeting three weeks ago, the staff proposed an alternative to this text amendment wherein this use would be allowed in the B-3 zone, but only when it is located at least 200' from an existing residential zone. This would provide a land use separation and buffer to the nearest residential neighborhoods. Mr. Sallee stated that the staff and the Zoning Committee recommended approval of the staff alternative text, for the reasons as listed in the staff report and on the agenda.

Petitioner Representation: Trey Guyton, Prism Engineering, stated that the petitioner is in agreement with the staff's recommendations, including the proposed staff alternative text.

Citizen Comment: There were no citizens present to comment on this proposal.

Action: A motion was made by Mr. Brewer, seconded by Mr. Wilson, and carried 8-0 (Blanton, Penn, and Plumlee absent) to approve the staff alternative text for ZOTA 2012-5, for the reasons provided by staff.

2. **ZOTA 2012-6: ALTER THE MEMBERSHIP OF THE HISTORIC PRESERVATION COMMISSION** (6/18/12)\* – petition for a Zoning Ordinance text amendment to alter one of the entities that refers to members to the Historic Preservation Commission from the "Board of the Land and Nature Trust of the Bluegrass," which no longer exists, to the "Bluegrass Conservancy."

INITIATED BY: Urban County Council

PROPOSED TEXT: (Note: Underlined text indicates an addition, ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance.)

### ARTICLE 13: HISTORIC PRESERVATION

**13-4(b) MEMBERSHIP** - The Historic Preservation Commission shall consist of fifteen (15) voting members, including the chairman. All members must be residents of Fayette County and have demonstrated an interest in historic preservation prior to his/her serving, be willing to accept the chairmanship of a sub-committee if such duty is deemed necessary by the chairman, and attend at least one informational/educational meeting per year, approved by the State Historic Preservation Office. At least two (2) of the fifteen (15) members shall be preservation-related professionals. These include the professions of architecture, history, archaeology, architectural history, historic preservation, planning, or related disciplines, such as urban planning; American Studies; American Civilization; or Cultural Anthropology. When the Historic Preservation Commission reviews an issue, and that field is not represented on the Historic Preservation Commission, the Historic Preservation Commission shall seek expert advice before rendering its decision.

Twelve (12) of the fifteen (15) members shall be nominated by organizations as follows:

- (1) A licensed architect nominated by the membership of the local chapter of the American Institute of Architects;

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- (2) A licensed real estate person nominated by the membership of the Lexington Board of Realtors;
- (3) A person nominated by the Lexington-Fayette Urban County Tourist and Convention Commission;
- (4) A person nominated by the ~~Board of the Land and Nature Trust of the Bluegrass Conservancy~~;
- (5) A person nominated by the Board of the Blue Grass Trust for Historic Preservation;
- (6) One person nominated by the staff of the Division of Planning of the Lexington-Fayette Urban County Government; and
- (7) Six (6) persons nominated at the annual meeting of the general memberships of Neighborhood Associations containing a designated historic district. Each organization shall nominate three (3) candidates for each vacancy for which they are eligible to make nominations; provided, however, that not more than six (6) members shall be appointed to represent all the locally designated historic districts and that not more than one (1) of these six (6) members shall be from the same locally designated historic district. From the respective nominees, the Mayor shall appoint the members subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council. If any organization fails to make candidate and/or membership nominations within thirty (30) days after written request from the Mayor, the Mayor shall, with approval of a majority of the members of the Urban County Council, appoint any otherwise qualified person to represent such organization, and the person selected shall be appointed for the unexpired portion of the term.

Two (2) of the fifteen (15) members shall be selected as follows: one (1) member shall be appointed from persons in the banking profession and one (1) member shall be appointed from persons in the builder/developer field. The Mayor shall appoint these members subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council.

One (1) of the fifteen (15) members shall be the Chairman of the Board of Architectural Review who shall serve as an ex-officio, voting member of the Historic Preservation Commission.

Notwithstanding the provisions of Section (2)(A)(1)(b), all of the initial appointments to the twelve (12) memberships which represent organizations shall be by Mayoral appointment of any otherwise qualified member of such organization, subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council.

All members must meet the requirements for Certified Local Governments in Kentucky; and the Historic Preservation Commission shall prepare and keep on file, available for public inspection, the members' qualifications. Article 16, the Code of Ethics of the Lexington-Fayette Urban County Government Charter, shall apply to members of the Historic Preservation Commission.

#### Staff Alternative Text

##### **13-4(b) MEMBERSHIP**

Notwithstanding the provisions of Articles 5 and 7 of the Lexington-Fayette Urban County Government Charter ~~Section (2)(A)(1)(b)~~, all of the initial appointments to the twelve (12) memberships which represent organizations shall be by Mayoral appointment of any otherwise qualified member of such organization, subject to confirmation by a majority of the members of the Lexington-Fayette Urban County Council.

**13-9 COMPLIANCE WITH OTHER CODES, STATUTES AND REGULATIONS** - In order to prevent purposeful neglect of structures within zones protected by H-1 overlays, all properties shall comply with the ~~BOCA, adopted Basic~~ Property Maintenance Code, as well as all other applicable codes, statutes, and regulations. To accomplish this, the Division of ~~Housing Maintenance~~ Code Enforcement shall quarterly compile and forward to the Board of Architectural Review and the Historic Preservation Commission a list of those properties in zones with H-1 overlays which have been found to be in violation of the ~~BOCA Basic International~~ Property Maintenance Code, 1998 Edition.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval, including addition of the Staff Alternative**, for the following reasons:

1. The text amendment to Article 13-4(b)(4) to modify the membership of the Historic Preservation Commission is appropriate because the Board of the Land and Nature Trust of the Bluegrass no longer exists, and a natural replacement is the Bluegrass Conservancy--an organization with a similar mission.

2. Including the staff alternative would be a timely and appropriate amendment to Article 13-4(b) and Article 13-9 of the Zoning Ordinance in order to update incorrect references related to the appointment of members to the Historic Preservation Commission, property maintenance code, and the division that enforces the code.

Staff Presentation: Ms. Wade presented the staff report, noting that the staff had prepared and distributed a slightly revised staff report. She said that the Urban County Council initiated this text amendment to alter the membership of the Historic Preservation Commission. Currently, the text of Article 13-4(b) of the Zoning Ordinance outlines how the 15 members of the Historic Preservation Commission are either nominated or appointed. The Ordinance specifies that one of the nominations should be made by the Board of Land and Nature Trust of the Bluegrass. That organization has not existed since 2000, so the staff of the Division of Historic Preservation recommended an organization to replace that entity. The Division of Historic Preservation recommended that that organization be replaced by the Bluegrass Conservancy, because their mission is similar to that of the Land and Nature Trust. The Historic Preservation Commission accepted that recommendation, and voted unanimously to request that the Urban County Council initiate a text amendment to Article 13.

Ms. Wade stated that there are two additional sections of Article 13 that the staff is recommending be amended. In Article 13-4(b), the staff found language that was unclear as to what portion of the Zoning Ordinance or Code of Ordinances it referred. The staff is suggesting removing that language, and replacing it with text that refers to Articles 5 and 7 of the Lexington-Fayette Urban County Charter, which relates to how the Mayor makes appointments to boards and commissions, specifically the staggering of terms. Ms. Wade said that the staff is also asking the Commission to consider an amendment to Article 13-9, which discusses compliance with other codes, statutes, and regulations, to remove the language that refers to the BOCA Maintenance Code and the Division of Housing Maintenance. The staff is recommending that all references to the BOCA Maintenance Code be changed to refer to the International Property Maintenance Code, 1998 edition. This proposed change is similar to two text amendments that the Commission recently approved. The staff is also recommending that any reference to the "Division of Housing Maintenance" be changed to the Division of Code Enforcement. Ms. Wade stated that the Zoning Committee recommended approval of this request at their meeting three weeks ago, with one slight change. The Zoning Committee asked that the word "initial" be stricken from the proposed staff alternative, since appointments to the Historic Preservation Commission are no longer initial at this point. The staff is recommending approval of the staff alternative text, for the reasons as listed in the staff report and on the agenda.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Brewer, and carried 8-0 (Blanton, Penn, and Plumlee absent) to approve ZOTA 2012-6, for the reasons provided by staff.

## VI. COMMISSION ITEMS

- A. **ASHLAND PARK NEIGHBORHOOD ZONE CHANGE INITIATION REQUEST** – The staff has received a request from the Ashland Park Neighborhood Association for Planning Commission initiation of an H-1 overlay zone for properties on Desha Road, Fincastle Road, Fontaine Road, Richmond Road, Slashes Road, and South Hanover Avenue. This request was reviewed by the Zoning Committee at their May 3, 2012, meeting.

Ms. Wade stated that the staff had distributed to the Commission members a summary exhibit packet; copies of three letters received by staff; a copy of the neighborhood's request letter and petition; and two sections of Article 13 of the Zoning Ordinance, relating to the criteria for nominating a historic district and the process for creating an H-1 overlay.

Ms. Wade oriented the Commission to the location of the Ashland Park neighborhood, noting the existence of other nearby local historic districts: South Ashland Avenue; part of Ashland Park; and Aylesford. The Ashland Estate, located to the southeast of the Ashland Park neighborhood, has National Register designation as an historic landmark. The properties in the request area are located on South Hanover Avenue; Desha Road; Fontaine Road; Fincastle Road; Slashes Road; and a few properties each on High Street and Richmond Road. Ms. Wade displayed several photographs of the area proposed for H-1 zoning, which were provided by the staff of the Division of Historic Preservation, as well as a map of the area.

Ms. Wade stated that the area proposed for H-1 zoning contains 175 properties, but includes 283 property owners, since at least three of the properties contain multi-family dwellings with condominium associations. Those multi-family units represent 111 property owners. As required by the Planning Commission's by-laws, the staff sent survey postcards to all of the property owners included in the proposed H-1 area, with a response rate of 59.7%. Of those responses received, 69.2% were in favor of the proposed H-1 overlay; 28.4% were in opposition; and 2.4% indicated they had no opinion. Ms. Wade displayed a map depicting the postcard response by location, noting that there seems to be a concentration of opposition near the Fontaine Road and South Hanover Avenue intersections with East High Street. Of the 283 postcards mailed, 114 property owners did not respond; there were 117 responses in support; 48 in opposition; and four indicating no opinion.

Commission Questions: Ms. Roche-Phillips asked, with regard to the postcard mailing, if the Council had asked for a text amendment in addition to the change to the Commission's by-laws. Ms. Wade answered that the Council initiated a text amendment to the Zoning Ordinance to require a postcard survey, and forwarded it to the Planning Commission. At that time, the Law Department indicated that the Council did not have the statutory authority to require that the Planning Commission institute a postcard mailing. The Planning Commission subsequently recommended disapproval of that text amendment, but

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then imposed upon themselves a requirement in their by-laws to mail postcards to any property owners before the initiation of an overlay zone.

Ms. Roche-Phillips asked if that postcard mailing requirement is in addition to the statutory notification requirements as set forth in KRS 100. Ms. Wade answered that the postcard mailing is in addition to those statutory requirements. Ms. Roche-Phillips asked if the postcards were just the first of two notifications to each property owner, should the Commission choose to initiate the requested H-1 overlay zone. Ms. Wade responded that an additional notification will be sent, should the H-1 overlay rezoning be initiated. She explained that, during earlier overlay zoning proceedings, some residents indicated that they did not receive notification of the proposed overlay zone until the actual zone change was already in process. That situation caused concern among the Council, the Planning Commission and staff, so the postcard mailing was instituted to notify the residents, and gauge their support of the proposed overlay, before the process begins. Since a detailed study is required to be performed by either an outside consultant or the staff of the Division of Historic Preservation, with the attendant costs, it is beneficial to have some idea of the level of neighborhood support prior to the beginning of the process.

Mr. Cravens asked if it would be possible to exempt a property from the proposed H-1 overlay zone, and how that would be done. Ms. Wade answered that it is possible. She said that the Commission could initiate the rezoning for just a portion of the area requested. Mr. Cravens asked if a single property could be exempted. Ms. Wade responded that that property would need to be excluded from the H-1 area. Mr. Cravens asked if the staff would make that exclusion, or if the property owner would need to do so. Ms. Wade answered that, in the past, property owners have written letters requesting exclusion from an area proposed for overlay zoning, but no such communications had been received in conjunction with this request. She noted that, while some residents have indicated that they are opposed to the ND-1 overlay, they are generally aware that it can be applied to their properties despite their opposition. Mr. Cravens asked if a resident could submit a letter requesting that their property be exempted. Ms. Wade responded that the Division of Historic Preservation might be opposed to removing individual properties from the H-1 area without considering the district boundaries as a whole, but individual residents could submit such requests.

Mr. Berkley asked, after reviewing the letters submitted to the Planning Commission with regard to this request, if there was some support for "segregating" the votes of the residents of Hanover Towers from the rest of the respondents. Ms. Wade answered that, of the 100 postcards sent to the Hanover Towers residents and their condo association, the staff received 51 postcards back. Of those returned cards, 41 (or 80.4%) were in support of this request. She explained that the resident who requested that those votes be counted separately believes that the large number of votes in support, from one parcel, could skew the data. The staff believes, however, that every property owner has the same right to express their opinion on such matters.

Ms. Copeland asked how many Hanover Towers residents returned postcards indicating their support. Ms. Wade responded that they returned 41 cards in support, and 8 indicating opposition.

Ms. Beatty asked, with regard to Mr. Cravens' question, who would have the final say in whether or not a property could be excluded. Ms. Wade answered that the Urban County Council has the final say in any rezoning request. Ms. Beatty asked if the Council could exempt any one single property from the request. Ms. Wade responded that they could, and noted that the Planning Commission also has that ability. She added that this request for initiation of an H-1 overlay zone is just the first step in the process; the next step would involve the Division of Historic Preservation conducting a study of the area, then a BOAR hearing, and then the final Planning Commission public hearing.

Mr. Brewer asked how the boundaries for the H-1 area were determined. Ms. Wade stated that, historically, the Ashland and Ashland Park neighborhoods have been separated, and she believes that the Ashland Park neighborhood representatives did not want to cause confusion by including properties from another neighborhood association in their request. She added that the Division of Historic Preservation recommended the boundary to the neighborhood. Mr. Brewer asked, referring to the staff's map depicting postcard responses by location, if it would be possible to remove the large group of properties that all voted in opposition to this request. Ms. Wade answered that it would be possible to remove those properties, but it could also result in removing some property owners who are in support of H-1 zoning and want to be included. She added that, at this point, the staff would suggest maintaining the boundary as proposed until the study is completed, then letting the Division of Historic Preservation determine if all of the properties are appropriate for H-1 zoning.

Ms. Roche-Phillips stated, with regard to the letter of opposition in the staff's exhibit packet that states that historic overlay zoning can decrease property values, that she believes that it actually enhances those values. She asked that the study of the Ashland Park neighborhood include information about the effect of H-1 zoning on overall property values. Ms. Wade noted that the Division of Historic Preservation would not typically include that type of information in their study.

Mr. Cravens asked if the H-1 design guidelines have been relaxed to allow the use of more energy efficient windows. Randy Shipp, Division of Historic Preservation, answered that the Historic Preservation Commission had been charged with updating the design guidelines. They recently spend 18 months revising those guidelines, with a great deal of discussion centered on replacement windows. Mr. Shipp said that those guidelines have been relaxed to a certain extent, in that more energy efficient metal-clad wood windows are now permitted, but vinyl windows are prohibited. Mr. Cravens said that new energy guidelines, which will require more efficient windows, are scheduled to go into effect in October of 2012. He asked if the new revised cri-

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teria still require divided-light windows. Mr. Shipp responded that the new criteria encourage the retention of existing windows whenever possible. He explained that there are several options that allow for the retention of original windows and provide increased energy efficiency, including the use of storm windows. If original windows are in poor condition and must be replaced, energy efficient simulated divided-light windows are encouraged. Mr. Cravens asked if H-1 overlay zoning provides for exemptions from building codes. Mr. Shipp answered that he did not know, but would consult with other staff members. Mr. Cravens said that, if someone wished to obtain a building permit for construction in the proposed H-1 area, it would be difficult to comply with the new energy guidelines without appropriate updates to the design guidelines.

Ms. Roche-Phillips asked if the H-1 study would be done by a consultant, or by staff. Mr. Shipp responded that, should the Commission choose to recommend initiation of the proposed H-1 overlay, he would be conducting the required study.

Neighborhood Association Presentation: Bruce Simpson, attorney, was present representing the Ashland Park Neighborhood Association. He said that he believes that part of the reason why downtown Lexington has become an "incredible destination" is the revitalization of downtown neighborhoods, with historic zoning being the most important land use tool and policy adopted by the Lexington-Fayette Urban County Government to facilitate that renaissance. Mr. Simpson stated that there will inevitably be objectors to a change such as the one proposed for the Ashland Park neighborhood, but the overall benefit of historic zoning speaks for itself through the number of people who are now interested in living in the downtown area. He urged the Planning Commission to reserve judgment about whether or not it would be appropriate to remove properties from the H-1 area until the study is complete, and to facilitate the process.

Tony Chamblin, president of the Ashland Park Neighborhood Association (APNA), stated that the association, which was founded in 1970, is dedicated to improving the quality of their neighborhood. They filed their letter of application for H-1 zoning on March 20, 2012, following an initial process which has been totally transparent to every property owner in the neighborhood and a unanimous vote of support from their 13-member board of directors.

Mr. Chamblin stated that, in 2011, the APNA conducted five, well-advertised and attended meetings to discuss the possibility of H-1 zoning. Prior to each meeting, advance door-to-door notice was provided to every property in the neighborhood, and residents were contacted by newsletter and email. In addition, the APNA has attempted to contact each of the 283 property owners, either in person or via phone or email, using the current Property Valuation Administrator (PVA) listings for each property. Mr. Chamblin said that 160 property owners to date have signed the petition in support of H-1 zoning; 28 people, representing 10% of the property owners, have signed the petition in opposition to this request. The APNA is pleased that nearly 70% of the postcards returned to the staff indicated support for H-1 zoning.

Mr. Chamblin said that, throughout this process, the APNA has worked closely with Bettie Kerr, Director of Historic Preservation, and her staff, as well as Ms. Rackers and Ms. Wade in the Division of Planning. The APNA believes that the historic legacy of the Ashland Park neighborhood, which was once part of Henry Clay's Ashland estate, as well as the landscaping designed by the famous Olmsted brothers, combine to make their neighborhood an ideal candidate for H-1 zoning. Mr. Chamblin noted that the residences on South Ashland and Central Avenues, which are part of the APNA, received H-1 designation in 1989 following an application by APNA. He said that he lives on South Ashland Avenue, and he believes that the neighborhood has improved in many ways since the application of H-1 zoning.

Mr. Chamblin stated that Henry Clay wanted the neighborhood surrounding his Ashland estate to be aesthetically pleasing. Following his death, his heirs hired the highly-regarded Olmsted Brothers landscape architectural firm to develop a plan for the 600-acre area. They were the sons of Frederick Law Olmsted, who designed New York City's Central Park and is considered the founder of American landscape architecture, among other notable achievements. The brothers completed their Ashland Park design in 1930. The area now known as the Ashland Park Historic District regularly attracts tourists, interested in seeing the wide range of architecturally significant homes, including examples of Craftsman, bungalow, Tudor Revival, Georgian Revival, Dutch Colonial Revival, and Spanish Eclectic design. The APNA believes that their neighborhood meets several of the criteria established for historic districts in Article 13 of the Zoning Ordinance, since the characteristics of the homes there are valuable to the study of that time period in American architecture. Mr. Chamblin stated that the APNA also believes that preservation of those characteristics can benefit Lexington as a whole, since it can help to maintain stability and economic improvement for established neighborhoods.

Citizen Opposition: David Minko, 306 South Hanover Avenue, stated that he believes that it is telling that the area immediately surrounding the Ashland Estate are not zoned H-1, since those properties should be even more worthy of protection. He said that he is part of a group of property owners in the South Hanover Avenue area who are all opposed to the proposed H-1 zoning, although he was the only one who was able to attend this meeting to voice his opposition. Mr. Minko believes that many of the proponents of H-1 zoning do not fully understand the impact it could have on their property rights.

With regard to the earlier questions about Hanover Towers and his letter of opposition, Mr. Minko stated that he does not believe that those owners should have a say in the H-1 process, since they own not the property itself, but rather "from the paint in." He believes that it would be more appropriate to allow Hanover Towers to have only one collective vote. He also believes that Hanover Towers is 25% renter-occupied, so their survey responses should be vetted to ensure that only property owners are counted among the respondents.

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Mr. Minko stated that he also has concerns about how the boundaries for the proposed H-1 area were chosen, and he would like to request that the area with a large concentration of owners in opposition be excluded. He said that, although the APNA does good work in the neighborhood, he does not agree with their prediction that the proposed H-1 zoning will increase property values. Mr. Minko also contends that the properties on South Hanover Avenue, many of which have large additions, should not be considered in the same category as those on South Ashland Avenue, which are clearly worthy of preservation. He said that many of the property owners in support of this request have already constructed large additions to their homes, so they will not be as adversely affected by the proposed H-1 overlay as will he and some of his nearby neighbors. Although he understands the concerns about the possibility of student rental properties in the neighborhood, he does not believe that H-1 zoning is the appropriate means to prevent that, since many of the homes in the area are very expensive. Mr. Minko concluded by explaining that he is particularly concerned about how the H-1 guidelines could affect his ability to install replacement windows in his home, since his current windows are old and not energy efficient.

Gail Wilkes stated that she and her husband own his family home on South Hanover Avenue, which is where he grew up. She said that they oppose the proposed H-1 overlay, because they intend to renovate their property at some point in the future. Ms. Wilkes also believes that, since nearly 30% of the Ashland Park property owners oppose this request, it would be unfair to impose restrictions on the use of their properties.

Ms. Wilkes said that she does not agree with Ms. Roche-Phillips' comments about H-1 zoning designation increasing property values; she contends that they would decline, since many prospective buyers would not want to purchase a property in an H-1 area, and existing residents would choose not to make improvements under burdensome guidelines. She added that some of the property owners might not be able to maintain their properties to the strict standards set out in the H-1 guidelines. Ms. Wilkes stated that she believes that most of the Ashland Park property owners love their neighborhood, and would maintain their properties in keeping with its character, without the added restrictions of H-1 zoning.

Rebuttal Comments: Mr. Simpson stated that he believes that there is a great deal of confusion about H-1 zoning. He said that he has been involved in many land disputes in 20 years of practicing law, but only one of those disputes involved the Board of Architectural Review, which indicates that the process is not unduly burdensome.

With regard to the comments about the property owners in Hanover Towers, Mr. Simpson stated that 69% of those respondents to the staff's survey were in favor of H-1 zoning. He believes that the opinions of condo owners are just as valid and worthy as those of single-family property owners.

Mr. Simpson stated that the request before the Planning Commission today is to initiate the H-1 overlay zoning process; following the completion of the study, the APNA will be required to make their case on its merits, and the opponents will have the opportunity to present their opinions. He asked that the Planning Commission vote to approve this request for initiation, in order to "open the door" for the neighborhood to begin their study.

Mr. Chamblin stated that the petition in support of this request was signed by 63% of the Hanover Towers property owners as indicated by PVA records; renters were not given the opportunity to sign it. The APNA then checked the number of property owners in support on the rest of South Hanover Avenue, excluding Hanover Towers, and found that the same number, 63%, were in support. Therefore, he does not believe that there is merit to the opponents' contention that allowing Hanover Towers owners to participate skewed the results.

Mr. Chamblin stated, with regard to concerns about the process required to get BOAR approval for property alterations in H-1 neighborhoods, that the APNA believes that it is much less onerous than the requirements of newer, deed-restricted developments. He added that he has had work done to his home, and he had no issues in working with the staff of the Division of Historic Preservation, or the BOAR.

Staff Rebuttal: Ms. Wade clarified that the staff sent survey postcards only to property owners, at their current address of record, using the available PVA information.

Chairman Comment: Mr. Owens announced that the hearing was now closed.

Commission Comments: Mr. Cravens asked if there is a threshold that must be met with regard to the postcard mailing. Ms. Wade answered that the Commission's by-laws require that at least half of the responses be in favor, but there is no requirement with regard to the response rate. Mr. Cravens stated that only 41% of the responses were in favor. Ms. Wade explained that 41% of all property owners had responded in favor, but 69.2% of the responses that were received were in favor.

Motion: A motion was made by Ms. Roche-Phillips and seconded by Mr. Wilson to initiate the H-1 process for the Ashland Park Neighborhood Association.

Discussion: Ms. Roche-Phillips commented that she would like for the Historic Preservation staff, as part of their study, to evaluate property values of existing H-1 neighborhoods as opposed to those without historic zoning designation.



Mr. Cravens stated that he does not believe there is sufficient support for H-1 zoning in the Ashland Park neighborhood, and he does not believe it is fair to impose the cost of hiring representation on those who oppose it.

Action: Ms. Roche-Phillips' motion carried, 7-1 (Cravens opposed; Blanton, Penn, and Plumlee absent).

- B. CANCELLATION OF UPCOMING WORK SESSION** – Mr. King stated that the staff would like to offer the Commission the opportunity to cancel their work session, originally scheduled for May 31<sup>st</sup>.

Action: A motion was made by Mr. Wilson, seconded by Mr. Brewer, and carried 8-0 (Blanton, Penn, and Plumlee absent) to cancel the previously scheduled May 31, 2012, Planning Commission work session.

**VII. STAFF ITEMS** – No such items were presented.

**VIII. AUDIENCE ITEMS** – No such items were presented.

**IX. MEETING DATES FOR JUNE, 2012**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 7, 2012
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	June 7, 2012
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>June 14, 2012</b>
Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	June 21, 2012
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	June 27, 2012
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>June 28, 2012</b>

- X. ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 3:54 p.m.

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